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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/478,467

Filing Date: January 06, 2000

Appellant(s): BAKER ET AL.

Frank C. Nicholas
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 06 May 2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 13-29, which are currently pending, claims 1-12 having been cancelled.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect. The request for reconsideration of the Final Office Action filed on 9/20/03 was entered and responded to with the issuance of the Advisory Action mailed on 12/10/03

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims s 13-29 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) ClaimsAppealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6,356,759 MUSTAJARVI 03-2002

6,175,744 ESMAILZADEH ET AL. 01-2001

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 13, 16-19, 22,23, 24, 26 and 27 are rejected under 35 U.S.C. 102(e) as being anticipated by Mustajarvi (6,356,759). This rejection is set forth in a prior Office Action, mailed on 09/20/03.

Claims 14, 15, 20, 21, 24, 25, 26 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mustajarvi in view of Esmailzadeh et al. (6,175,744). This rejection is set forth in a prior Office Action, mailed on 09/20/03.

(11) Response to Argument

Appellant's first argument is that Mustajarvi fails to anticipate claims 13, 19, 23, 27, and 35 because: "Mustajarvi fails to disclose and teaches away from any transmission of the control information subsequent to a reception of an acknowledgment by secondary station MS", and includes analysis of the reference in which the Appellant admits that Mustajarvi meets other claimed

limitations, (see pages 6-8 of instant brief), recognizing that: step 3-1 of Mustajarvi meets the “transmitting a request for resources” limitation; and step 3-2 of Mustajarvi meets the broadly claimed “transmitting an acknowledgment” limitation, since granting access/ allocating resources in response to a request would reasonably acknowledge the request. Appellant then apparently argues that in step 3-3 of Mustajarvi, the secondary station could either transmit an LLC frame signifying a ready state or request additional resources - arguing that step 3-4 of Mustajarvi acknowledges an optional second request for additional resources prior to the transmission of data in step 3-5, thereby (allegedly) proving that Mustajarvi teaches that control information must be concurrently transmitted with each of the acknowledgments (step 3-2) and the second acknowledgment (step 3-4) and consequently doesn’t transmit the control information “subsequent” to a reception of the (claimed) acknowledgment”.

In response, the examiner must first consider the scope and meaning of the term “acknowledgment” and “control information” as used by appellant. Page 6, lines 18- of Appellants’ specification says “the link is initiated by the MS 110 transmitting a request 202 (REQ) for resources on the uplink channel 124. If it receives the request and has available resources, the BS 100 transmits an acknowledgment 204 (ACK) on the downlink channel 122 providing the necessary information for communication to be established”. Clearly Mustajarvi’s teaching of granting access/allocating resources in response to a request would reasonably meet acknowledgment of the request.

Regarding the allegation that Mustajarvi teaches that control information must be concurrently transmitted with each of the acknowledgments (step 3-2 and the second acknowledgment step 3-4) and consequently doesn't transmit the control information "subsequent" to a reception of the (claimed) acknowledgment", examiner would like to draw Appellants' attention to Appellants' disclosure which states on page 7, lines 8-11, which states, "... the BS 100 to measure the received power level of the request 202 and to instruct the MS 110, within the acknowledgment 204, an appropriate power level for the uplink data transmission 210" which clearly does not limit (the claimed) transmission of "control information SUBSEQUENT TO A RECEPTION OF AN ACKNOWLEDGMENT and as such whether Mustajarvi teaches that "control information must be concurrently transmitted with each of the acknowledgments (step 3-2)" examiner asserts that Mustajarvi meets the claimed limitation of "subsequent to a reception of the acknowledgment by the secondary station , control information is initially transmitted on an uplink control channel and a downlink control channel between the primary station and said secondary station", regardless of whether the secondary station transmits (in step 3-3) an LLC frame or a request for more resources, since in Appellants' specification, for example on page 7, lines 14-24, states "Figure 3 illustrates a solution to the problem in which the start of the uplink data transmission 210 is delayed by a time sufficient for the power control to have converged sufficiently to enable satisfactory reception of data transmissions by the BS 100" Inasmuch as power control is a form of "control information", examiner maintains that the

above does not clearly constitute (the claimed) "initial transmission of data on the uplink data channel is determinedly delayed until after the initial transmission of control information on the uplink control channel and the downlink control channel" since "power control to have converged sufficiently" does not indicate when the power control was transmitted. Examiner further maintains that Appellants' subsequent to a reception of the acknowledgment by the secondary station, control information is initially transmitted ..." does not clearly apply only to information sent after the acknowledgment as shown by Appellants disclosure and as such even if control information is transmitted concurrently with the acknowledgment, such transmission still meets the claim limitations.

Mustajarvi states on col. 2, lines 60-65, "in step 3-4 the network sends a Packet Resource Assignment message. The Packet Resource Assignment message comprises the TFI identifier allocated to the connection; ..." which could reasonably be construed as "control information". Examiner further maintains that Mustajarvi's disclosure as illustrated in Fig. 3, shows the exchange of control information between the primary station (BSS) and the secondary station (MS) – see steps 3-3 and 3-4 (note use of PACCH in both steps), subsequent to the acknowledgment in step 3-2, with a determined delay period as shown by the break between steps 3-4 and 3-5 prior to transmission of data from the secondary station (MS) to the primary station (BSS).

Appellant argue against the rejection of claims 16-18 by agreeing with examiner that “at step 3-5 as illustrated in FIG. 3, Mustajarvi discloses an initial transmission of data on an uplink data channel from the secondary station MS to primary station BSS subsequent to the reception of the acknowledgment by secondary station MS wherein the initial transmission of data on the uplink data channel is delayed until after the initial transmission of control information on the downlink control channel” “however, Mustajarvi fails to discuss to any degree whether the initial transmission of data on the uplink data channel is “determinedly” delayed, such as, for example, by a predetermination of the delay, a dynamic delay determination by primary station BSS based on power levels in the downlink control channel, or a dynamic delay determination by second station MS based on power levels in an uplink control channel”. Examiner maintains that the claims only calls for – “dynamically determines the delay in the initial transmission of data on the data channel” “wherein said delay in the initial transmission of data on the data channel is predetermined” and as such examiner maintains Mustajarvi’s teaching as illustrated in Fig. 3 shows a delay that is “determinedly”, “dynamically” or “predetermined” delayed as shown by the broken lines between step 3-4 and step 3-5 which shows a waiting period after set up prior to the transmission of data. Furthermore, it appears Appellants’ arguments are directed to features which are not claimed, and it is also noted that the features upon which applicant relies (i.e., “determinedly” delayed, such as, for example, by a predetermination of the delay, a dynamic delay determination by primary station BSS based on power levels in the

downlink control channel, or a dynamic delay determination by second station MS based on power levels in an uplink control channel) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The reasons set forth above in regard to claims 16-18 applies to Appellants' arguments in regard to claims 22, 24, 25 and 26.

In regard to Appellants' argument that "Mustajarvi fails to teach or suggest "wherein the delay in the initial transmission of data on the data channel is determined to allow for a correction of a difference between initial power levels and target power levels in the uplink control channel and the downlink control channel" as recited in dependent claim 15", examiner asserts that it is because Mustajarvi do not teach the above underlined limitations as well as the limitations of dependent claims 14, 20, 21, 28 and 29, that Esmailzadeh has been cited to provide such teachings for an obviousness combination with Mustajarvi.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Charles Appiah
July 22, 2004

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Please find below and/or attached an Office communication concerning this application or proceeding.